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Pursuant to the Federal Acquisition Regulation (FAR), Subpart 9.5, the United States Department of Energy (DOE) Contracting Officer (CO) conducted a preliminary organizational conflict of interest (OCI) analysis early in the Portsmouth Gaseous Diffusion Plant (GDP) Decontamination and Decommissioning (D&D) acquisition planning phase. DOE made an initial determination, dated February 2, 2009, to exclude the United States Enrichment Corporation (USEC) and any USEC affiliate from participating in the D&D acquisition as a prime contractor.

DOE and USEC executed the June 19, 2009, Binding Organizational Conflict of Interest Mitigation Agreement (Binding OCI Agreement). This outlined a number of actions each party was to take with the most important being USEC and DOE were to complete and execute Binding Facility Agreements for buildings X-326, X-330, and X-333 by October 1, 2009, in an attempt to mitigate any potential OCI with USEC participating as a subcontractor. DOE and USEC failed to execute the Binding Facility Agreements for buildings X-326, X-330, and X-333 on October 1, 2009. The June 19, 2009 Binding OCI Agreement is terminated. Consequently, USEC's ultimate ability to participate as a subcontractor is not clear.

DOE will defer issuing a final determination on USEC's ability to participate as a subcontractor until after receipt of proposals and evaluation of each individual offeror's OCI mitigation plan. DOE is of the view that USEC continues to have potential conflicts of interest until USEC has either: (1) provided firm, binding dates for turnover of the facilities to DOE, or (2) subleased the facilities to the American Centrifuge Plant (ACP). Specifically, as long as USEC still possesses the power to make decisions about facility turnover, there is the potential for its interests as a D&D subcontractor to be affected by those decisions, and for its decisions as a leaseholder to be affected by its interests as a D&D subcontractor.

Under the circumstances, an offeror that proposes using USEC as a subcontractor should provide a comprehensive and detailed mitigation plan as required under I.117, DEAR 952.209-72 (Alt. 1), that addresses, at a minimum, how the prime contractor will ensure it can provide unbiased and objective advice to DOE regarding the following:

- the most advantageous schedule for the return of facilities to DOE by USEC under the GDP Lease;
- whether USEC has met facility turnover requirements under the GDP Lease;
- potential USEC liability under the GDP Lease;
- whether DOE should provide consent to requests from USEC under the GDP Lease;

- what services are required to support the D&D project, including but not limited to identifying the most cost-efficient service provider, including but not limited to services currently provided by USEC to DOE pursuant to the GDP Lease and/or the Memorandum of Agreement between United States Department of Energy and United States Enrichment Corporation for Supply of Services, Modification No. 1 executed December 7, 2006.

The prime contractor's mitigation plan should also address, at a minimum, the mitigation of the potential OCI associated with the economic incentive for USEC to make facility turnover decisions under the GDP Lease based on USEC corporate interests that could then influence the requirements under the D&D project. DOE will evaluate the prime contractor's mitigation plan and issue a final determination on whether USEC can participate as a D&D subcontractor.